

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ARCON SOLUTIONS, LLC,

Plaintiff,

-against-

EAST 29th STREET, LLC, and
ESPAIS PROMOCIONS IMMOBILARIES EPI,
S.A.,

Defendants.

08 CV 02050 (RMB)

**ARCON SOLUTIONS, LLC'S
ANSWER AND AFFIRMATIVE
DEFENSES TO COUNTERCLAIM
AND DEMAND FOR JURY TRIAL**

Plaintiff/Counterclaim Defendant ARCON SOLUTIONS, LLC (“Arcon” or “Counterclaim Defendant”), by and through its undersigned counsel, hereby answers the counterclaim filed against it by Defendants/Counterclaim Plaintiffs EAST 29th STREET, LLC and ESPAIS PROMOCIONS IMMOBILARIES EPI, S.A., and states:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Admitted.
7. Admitted.
8. Admitted.
9. Admitted.
10. Denied for lack of knowledge sufficient to form a belief as to the truth of the allegations contained in this paragraph.

11. Denied for lack of knowledge sufficient to form a belief as to the truth of the allegations contained in this paragraph.

12. Denied for lack of knowledge sufficient to form a belief as to the truth of the allegations contained in this paragraph.

13. Denied for lack of knowledge sufficient to form a belief as to the truth of the allegations contained in this paragraph.

14. Arcon admits that Espais engaged in discussions with Arcon to serve as the development manager. The remaining allegations of paragraph 14 are denied for lack of knowledge sufficient to form a belief as to the truth of the allegations contained in this paragraph.

15. Denied.

16. Admitted that the parties entered into a Development Management Agreement on or about August 1, 2006 but states that the Development Management Agreement must be reviewed for a complete statement of its terms.

17. Admitted that East 29th Street opened the East 29th Street Account. The remaining allegations of this paragraph 17 are denied.

18. Arcon admits that this language is included in the Development Management Agreement but states that the Development Management Agreement must be reviewed for a complete statement of its terms.

19. Denied.

20. Admitted.

21. Denied.

22. Denied.

23. Denied.
24. Admitted that the air rights over property located at 37 East 29th Street was purchased. Denied as to the remaining allegations in this paragraph 24.
25. Denied.
26. Denied.
27. Denied.
28. Denied.
29. Denied.
30. Denied.
31. Denied.
32. Denied.
33. Denied, and state that the construction contract with Gotham must be reviewed for a complete statement of its terms.
34. Denied.
35. Denied.
36. Denied.
37. Denied.
38. Denied.
39. Denied.
40. Denied.
41. Denied.
42. Denied.
43. Denied.

44. Denied.

45. Denied.

46. Denied.

47. Denied.

48. Denied.

49. Denied.

50. Denied.

51. Denied.

52. Denied.

53. Denied.

54. Denied.

55. Denied for lack of knowledge sufficient to form a belief as to the truth of the allegations contained in this paragraph.

56. Denied for lack of knowledge sufficient to form a belief as to the truth of the allegations contained in this paragraph.

57. Admitted that Falke sent an email to De Gispert regarding the withdrawal of \$218,750 from the East 29th Street Account. Denied as to the remaining allegations.

58. Denied for lack of knowledge sufficient to form a belief as to the truth of the allegations contained in this paragraph.

59. Denied.

60. Admitted.

61. Denied.

62. Denied.

63. Admitted that money was wired. Denied as to the remaining allegations of paragraph 63.

64. Admitted that money was wired. Denied as to the remaining allegations of paragraph 64.

65. Admitted that money was wired. Denied as to the remaining allegations of paragraph 65.

66. Admitted that Falke and Gemignani are the sole members of Arcon. Denied as to the remaining allegation of paragraph 66.

67. Denied.

68. Denied.

69. Arcon incorporates herein its answers to paragraph 1 through 68 of the Counterclaim as if fully set forth herein.

70. Admitted.

71. Denied.

72. Denied.

73. Denied.

74. Denied.

75. Denied.

76. Arcon incorporates herein its answers to paragraph 1 through 75 of the Counterclaim as if fully set forth herein.

77. Denied.

78. Denied.

79. Denied.

80. Denied.

81. Denied.

82. Denied.

83. Denied.

84. Denied.

85. Arcon incorporates herein its answers to paragraph 1 through 84 of the Counterclaim as if fully set forth herein.

86. Denied.

87. Denied.

88. Denied.

89. Denied.

90. Denied.

91. Arcon incorporates herein its answers to paragraph 1 through 90 of the Counterclaim as if fully set forth herein.

92. Denied.

93. Denied.

94. Denied.

95. Denied.

96. Denied.

97. Arcon incorporates herein its answers to paragraph 1 through 96 of the Counterclaim as if fully set forth herein.

98. Arcon admits that this language is included in the Development Management Agreement but states that the Development Management Agreement must be reviewed for a complete statement of its terms.

99. Denied.

AFFIRMATIVE DEFENSES

1. The Counterclaim fails to state a claim upon which relief can be granted.
2. The relief sought by Counterclaim Plaintiffs is barred and unenforceable due to Counterclaim Plaintiffs' breaches of the Development Management Agreement.
3. The relief sought by Counterclaim Plaintiffs is barred and unenforceable under the doctrine of unclean hands.
4. Counterclaim Plaintiffs have failed to comply with the essential conditions of the Development Management Agreement and are not permitted to bring this action.
5. Counterclaim Plaintiffs waived requirements under the Development Management Agreement.
6. Counterclaim Plaintiffs have failed to perform conditions precedent and are thus not entitled to bring this lawsuit.
7. Counterclaim Plaintiffs have frustrated Counterclaim Defendant's performance under the Development Management Agreement.
8. Through a course of dealing established between the parties, Counterclaim Defendant was not required to perform numerous services and functions under the Development Management Agreement.
9. Counterclaim Defendant is entitled to a set-off for those damages it has suffered by the actions of Counterclaim Plaintiffs.

WHEREFORE, Counterclaim Defendant ARCON SOLUTIONS, LLC demands judgment in its favor and against Counterclaim Defendants on all counts of the Counterclaim, for a judgment dismissing the Counterclaim in its entirety with prejudice, and for its reasonable attorneys' fees and costs incurred in having to defend this action.

Demand For Jury Trial

Counterclaim Defendant demands a trial by jury of all matters so properly tried.

Date: May 30, 2008

ZARCO EINHORN SALKOWSKI & BRITO, P.A.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 30, 2008, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the attached Service List via transmission of Notices of Electronic Filing generated by CM/ECF.

s/ Mikhael Ann Buchanan

SERVICE LIST

**Arcon Solutions LLC v. East 29th Street, LLC and Espais Promocions Immobilaries EPI,
S.A.**

**Case #: 1:08-cv-02050-RMB
United States District Court, Southern District of New York**

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